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No. 85-667

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

MONARCH LONG BEACH CORP.,
Cross-Petitioner,

v.

SOFT DRINK WORKERS, LOCAL 812, etc., *et al.*,
Cross-Respondents.

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR CROSS-RESPONDENTS IN OPPOSITION

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BRIEF FOR CROSS-RESPONDENTS IN OPPOSITION

Soft Drink Workers, Local 812, etc., *et al.* submit that whether or not their petition for a writ of certiorari in No. 85-466 is granted, the cross-petition for certiorari in No. 85-667 filed by Monarch Long Beach Corp. ("Monarch") should be denied. That cross-petition seeks the reinstatement of Monarch's pendent state law claim against the same union conduct that is the predicate of Monarch's federal claim under § 303 of the Labor Management Relations Act of 1947, 29 U.S.C. 187; that federal claim was sustained by the court below and is the subject of the certiorari petition in No. 85-466. The dismissal of Monarch's pendent state law claim is, as the

court below recognized, required by precedent in this court directly in point, and the cross-petition is therefore insubstantial.

REASONS FOR DENYING THE WRIT

A. In dismissing Monarch's state law claim, the Court of Appeals correctly followed *Teamsters Union v. Morton*, 377 U.S. 252. The Court there answered in the affirmative the question whether "Congress occupied this field and closed it to state regulation." *Id.* at 258, quoting *Automobile Workers v. O'Brien*, 339 U.S. 454, 457. *Morton* is dispositive here.

In *Morton* the Court ruled first that a state may not, under its own law, prohibit the use during a labor dispute governed by the LMRA of an economic weapon permitted by federal law:

> Section 303(b) of the Labor Management Relations Act expressly authorizes state and federal courts to award damages to any person injured by certain secondary boycott activities described in § 303(a). The type of conduct to be made the subject of a private damage action was considered by Congress, and § 303(a) comprehensively and with great particularity "describes and condemns specific union conduct directed to specific objectives." *Carpenters Local 1976* v. *Labor Board*, 357 U.S. 93, 98. In selecting which forms of economic pressure should be prohibited by § 303, Congress struck the "balance . . . between the uncontrolled power of management and labor to further their respective interests," *id.*, at 100, by "preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and [by] shielding unoffending employers and others from pressures in controversies not their own." *Labor Board* v. *Denver Bldg. & Construction Trades Council*, 341 U.S. 675, 692.
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> * * * *

> [A] weapon of self-help, permited by federal law, form[s] an integral part of the petitioner's effort to achieve its bargaining goals during negotiations with the respondent. Allowing its use is a part of the balance struck by Congress between the conflicting interests of the union, the employees, the employer and the community. *Electrical Workers Local 761* v. *Labor Board*, 366 U.S. 667, 672. If the Ohio law of secondary boycott can be applied to proscribe the same type of conduct which Congress focused upon but did not proscribe when it enacted § 303, the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power between labor and management expressed in our national labor policy. "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." *Garner* v. *Teamsters Union*, 346 U.S. 485, 500. [377 U.S. at 258, 260, footnotes omitted.]

Morton holds also that the states may not provide their own remedy under state law for conduct during an LMRA labor dispute that is prohibited by § 303:

> The same considerations require reversal of the award of punitive damages. Punitive damages for violations of § 303 conflict with the congressional judgment, reflected both in the language of the federal statute and in its legislative history, that recovery for an employer's business losses caused by a union's peaceful secondary activities proscribed by § 303 should be limited to actual, compensatory damages. And insofar as punitive damages in this case were based on secondary activities which violated only state law, they cannot stand, because, as we have held, substantive state law in this area must yield to federal limitations. In short, this is an area "of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes

> that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law." *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176. Accordingly, we hold that since state law has been displaced by § 303 in private damage actions based on peaceful union secondary activities, the District Court in this case was without authority to award punitive damages. [377 U.S. at 260-261.]

While the foregoing analysis specified that punitive damages may not be awarded by state law for conduct which violates § 303, the principle there announced embraces all state remedies of any kind "since state law has been displaced by § 303 in private damage actions based on peaceful union secondary activities * * *." (*Id.* at 261.) The Court of Appeals correctly relied on this holding of *Morton* in affirming the dismissal of Monarch's pendent state claim. (Pet. No. 85-466, p. 7a.) Since that is a precedent directly in point supporting that judgment, the cross-petition for certiorari should be denied.[1]

B. Although the Court of Appeals relied on *Morton*, the cross-petition for certiorari does not mention that decision at all. Monarch has thus failed in what one would think is a necessary first step by anyone claiming error as the basis of review by this Court. In any event, the argument made by Monarch deserves only short shrift. Monarch asserts that "the preemption doctrine is inapplicable to the instant case since state law should not be preempted when the conduct in question touches on in-

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[1] Petitioners rely on *Barclay's Ice Cream Co. v. Local No. 757*, 51 A.D.2d 516, 378 N.Y.S. 2d 935, aff'd 41 N.Y. 2d 269, 392 N.Y.S. 2d 278, on remittitur, 42 N.Y. 2d 870, 399 N.Y.S. 2d 793, cert. denied, 436 U.S. 925. That decision is contrary to *Morton* and is therefore wrong. Since this Court cannot review every state court decision that is inconsistent with a decision of this Court, the existence of *Barclay's* does not justify review of a decision like that of the court below, which faithfully follows the *Morton* precedent.

terests deeply rooted in local feeling and responsibility." (Monarch Pet. 6.)

This argument confuses two distinct lines of labor preemption analysis. The "deeply rooted" exception was originally articulated in *San Diego Unions v. Garmon*, 359 U.S. 236, 243-244, as a qualification to the broad rule of preemption announced in that case which is based predominantly on the primary jurisdiction of the National Labor Relations Board.[2] But as this Court recognized, that line of preemption doctrine must be distinguished from the one exemplified by *Morton* and *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, which proscribes state regulation where Congress has occupied the field. *See Railroad Trainmen v. Terminal Co.*, 394 U.S. 369, 383, n. 19; *Belknap, Inc. v. Hale*, 463 U.S. 491, 498-499; *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S.Ct. 3179, 3186-3187. *Belknap* and *Brown* have made clear that the "deeply rooted" exception is applicable only to *Garmon* preemption. *Ibid.*[3]

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[2] *Operating Engineers v. Jones*, 460 U.S. 669, cited at Monarch Pet. 6 is such a case.

[3] In *Belknap*, the Court separately analyzed preemption under the substantive supersession and *Garmon* doctrines, and considered the respondent's reliance on a "deeply rooted" state interest only in connection with the latter. *Compare* 463 U.S. at 499-507 with *id.* at 507-512, especially at 509-510.

CONCLUSION

For the foregoing reasons, the cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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